THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 24951 of 1997

DATED: 14-02-2007

Between:-

1. Chief Engineer (Civil) II, APSRTC, Musheerabad, Hyderabad,
2. Executive Engineer (Civil, APSRTC) Karimnagar

…Petitioners

And

Sri P. Gnaneswar c/o P. Rajeswar, H.No. 4-4-51, Kalvagadda, Nirmal post, Adilabad District and another.

…Respondents.

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O R D E R

Aggrieved of the Award of the Industrial Tribunal-cum-Labour Court in I.D. No. 90 of 1993, dated 05-12-1996, the A.P.S.R.T.C. is before this Court.

The first respondent filed an application under Section 2-A (2) of the Industrial Disputes Act (for short 'the I.D. Act') contending that he was orally appointed as a Technical Maistry on 01-11-1991, that he worked with the second respondent till 30-04-1993, thereafter he was working in the office of the Deputy Executive Engineer (Civil), A.P.S.R.T.C. at Adilabad, drawing a monthly salary of Rs. 800/-. He contended that he was orally removed on 01-05-1993 and inasmuch as no enquiry was conducted as required his termination from service in violation of Section 25-F of the I.D. Act is arbitrary and illegal.

In its counter affidavit, the petitioner herein contended that the first respondent was not appointed by the petitioner and there is no violation of the provisions of the I.D. Act. He also contended that the first respondent had to establish that he worked for more than 240 days and that an employer and employee relationship exists. It was also contended that since the first respondent was not employee of the A.P.S.R.T.C., the question of their producing evidence to show that he was drawing Rs.800/- per month did not arise. While the first respondent examined himself as W.W-1 and his co-worker as W.W-2

and marked Exs.W-1 to W-11, the petitioner herein chose not to adduce any evidence, either oral or documentary.

The first respondent in his evidence deposed that he worked under the Deputy Executive Engineer, Adilabad, as Technical Assistant, that his services were terminated from 30.04.1993 and that he was paid Rs. 800/- per month towards his salary. He also produced Ex.W-1 identity card as well as Ex.W-2 the authorization given to him to receive postal tappals by the 2nd respondent as Ex.W-3, and the emergency departmental passes given to him to secure articles as Exs.W-4 and W-5. He also produced Exs.W-6 to W-10 letters, which he had submitted claiming that he should be appointed permanently since his juniors had already been appointed on a regular basis. The first respondent, however, admitted that he submitted an application before the Executive Engineer and thereupon, his services were engaged by the Assistant Engineer, even though no applications were called from the employment exchange. According to him, Ex.W-3 was valid for 12 months and Ex.W-2 was valid for one month. He further deposed that he was doing private jobs and was being paid Rs. 50/- for preparation of the said work. WW-2 in his evidence stated that the petitioner worked along with him and he was a Civil Diploma holder having passed L.C.E. He also stated that he was also being paid daily wages, that he was senior to the petitioner, and that the petitioner had an employment card and was sent as a Conductor. W.W-2 stated that Ex.W-1 identity card shows that the petitioner was working as a Conductor. The Tribunal held that the identity cards coupled with the office copy of the letters in Exs.W-6 to W-10 which contain the handwriting of W.W-1 supports the evidence of W.W-1 and that Ex.W-11 photostat copy of the letter of recruitment of casual/contract labour

of Civil Engineering Department proved his version. According to the Tribunal, the first respondent was appointed orally and he worked for more than 240 days. Ex.W-11 letter dated 24.12.1993 is said to be a letter of recruitment of casual/contract labour. In case the petitioner was a contract labour then, as rightly contended by Smt. P.Rajini Reddy, there is no employer employee relationship between the petitioner and the first respondent. There is no evidence on record to show that the first respondent had worked for more than 240 days. The conclusion of the Tribunal that the petitioner had been appointed orally and had completed more than 240 days is not based on the evidence on record. The finding of the Tribunal in this regard is clearly perverse, as it is based on no evidence. It is well settled in a catena of judgments of the Supreme Court in **Manager, Reserve Bank of India, Bangalore v. S. Mani**[1]**; Batala Co-op. Sugar Mills Ltd. V. Sowaran Singh**[2]**; Surendranagar District Panchayat v. Dahyabhai Amarsinh**[3]**; Chief Engineer (Construction) v. Keshava Rao (dead) by Lrs**[4]**l Range Forest Officer v. S.T. Hadimini**[5] that the burden of establishing that he had worked for more than 240 days in a period of 12 months prior to his termination is on the workman and it is only if this burden is discharged, would the burden shift to the employer. The mere fact that the petitioner did not adduce any evidence would not absolve the first respondent of discharging this burden before the Tribunal. The finding of the Tribunal that the first respondent should be paid two years compensation in lieu of reinstatement for violation of Section 25-F of the Act is contrary to law. Payment of compensation in lieu of reinstatement would arise only if there is evidence on record to

establish that the first respondent had put in 240 days service in the 12 months prior to the date of termination. Except for the self-serving oral testimony of the first respondent himself, there is no other evidence on record to establish this fact. The award of the Tribunal is quashed.

The writ petition is allowed. However, in the circumstances, without costs.

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RAMESH

RANGANATHAN, J
Dated: 14-02-2007
vp

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[1] 2005(5) SCC 100
[2] 2005(8) SCC 481
[3] 2005(8) SCC 750
[4] 2005(11) SCC 229
[5] 2002(3) SCC 25